IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 383 of 2006

Date of decision 5.9.2006

Chanchala Devi and others **…Appellants.**

Versus

Santokh Singh and others **…Respondents.**

Coram

The Hon'ble Mr. Justice : **Surjit Singh, Judge.**

Whether approved for reporting?

For the appellants: **Mr. H.K. Bhardwaj, Advocate**.

For respondents : **Nemo**.

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. Predecessor of the appellants, named Sarwan Singh, was one of the several co-owners of certain land. One of the co-owners, named Soma, had filed a petition for partition of that land some-time prior to the year 1965. It appears from the record that partition had been carried out. There were tenants on that land. Perhaps the tenants were not made

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Whether reporters of Local Papers may be allowed to see the Judgment?

party to the partition proceedings and, therefore, the partition among the co-owners did not affect their rights as tenants in the land held by them as such. It is submitted by the learned counsel for the appellants that **Sanad** of the partition was drawn. However, from the judgments of the two Courts below it appears that the alleged **Sanad** was not proved, because in neither of the two judgments it finds mention. Thereafter consolidation took place in the village. On the conclusion of the consolidation process, when re-partitioning was being done, the persons, who were tenants under the joint owners, applied for allotment of land to them out of the individual shares of the co-owners. The Consolidation Officer passed an order that the tenants be allotted certain specified areas out of the shares of each of the co-sharers, who were party to the earlier partition proceedings. Thereafter the plaintiff (appellants' predecessor) appears to have approached the Consolidation Officer for the review of that order. That application was dismissed. The predecessor of the appellants then filed a suit out of which this appeal has arisen. In the suit he impleaded the tenants as contesting tenants and his co-sharers as proforma defendants and pleaded that when the partition had already taken place, the Consolidation Authorities had no jurisdiction to order the partition on completion of consolidation process.

3. The suit was contested by those defendants, who were tenants on a part of the joint holding and pleaded that the Consolidation Officer had rightly ordered re-partition and allotted certain land to them.

4. Trial Court dismissed the suit. Appeal filed by the appellants stands dismissed by the learned District Judge. Now the appellants have come in appeal to this Court.

5. Learned counsel for the appellants submits that once partition had taken place prior to the Consolidation and the **Kurahs** had been prepared and the parties put in separate possession, the Consolidation Officer could not have ordered the re-partition and his order is illegal and without jurisdiction.

6. I find no merit in the submission. As a matter of fact, as already noticed while summarizing the facts, the tenants' rights had not been affected in any manner on account of partition of the land, among the co-sharers. There is nothing on the record to show that after the partition the tenants ceased to occupy the land, which they had been in occupation of at the time of the partition. Thus, even after the alleged partition the tenants are to be presumed to have been in occupation of the land, which had been leased out to them, when the holding was joint and, therefore, no fault can be found with the order of the Consolidation Officer in passing the impugned order.

7. Learned counsel further submits that the plaintiff, after the partition, had sold that portion of the land, which was held by the tenants and which portion was included in his **Kurah,** to the tenants in the year 1965 and, therefore, no land ought to have been allotted to the tenants out of his remaining land.

8. A sale deed, which has been shown to me, does not indicate that the land sold by the predecessor of the appellant was the same as was held by the contesting defendants as tenants. On the contrary, the sale deed shows that the land was sold at the rates prevailing at that time, i.e. in the year 1965. The sale deed, which is in respect of 16 Kanals land, indicates that the sale consideration was Rs.4500/-.

9. When the attention of the learned counsel was drawn to the fact that in the partition among the co-sharers, which had taken place prior to the start of Consolidation process, tenants were not party to the partition proceedings and, therefore, no fault could have been found with the order of the Consolidation Officer for the re-partitioning of the land, he urged that re-partitioning has been ordered by the Consolidation Officer on the request of the co-owners. The submission is factually incorrect. If it were so, the co-owners should have been impleaded as contesting defendants and not as proforma defendants. Secondly the copy of order of Consolidation Officer, which has been shown to me by the learned counsel, clearly shows that the request for re-partition had been made not by any of the co-owners but the tenants, i.e. the contesting defendants.

10. Since no substantial question of law arises, appeal is dismissed.

September 5, 2006 (BC) **(Surjit Singh)**
Judge